

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 291**

Introduced by Revenue Committee: Landis, 46, Chairperson;  
Baker, 44; Connealy, 16; Hartnett, 45; Janssen, 15;  
Raikes, 25; Redfield, 12

Read first time January 13, 2003

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section  
2 77-5021, Reissue Revised Statutes of Nebraska, and  
3 sections 77-103.01, 77-1504.01, 77-1510, 77-5001,  
4 77-5003, 77-5005, 77-5011, 77-5015, 77-5016, 77-5022, and  
5 77-5023, Revised Statutes Supplement, 2002; to redefine a  
6 term; to change provisions relating to appeals, the Tax  
7 Equalization and Review Commission, hearings, notices,  
8 meetings, and powers and duties; to harmonize provisions;  
9 to repeal the original sections; and to declare an  
10 emergency.

11 Be it enacted by the people of the State of Nebraska,

1                   Section 1.           Section 77-103.01, Revised Statutes  
2 Supplement, 2002, is amended to read:

3                   77-103.01. Class or subclass of real property means a  
4 group of properties that share one or more characteristics  
5 typically common to all the properties in the class or subclass,  
6 but are not typically found in the properties outside the class or  
7 subclass. Class or subclass includes, but is not limited to, the  
8 classifications of agricultural land or horticultural land listed  
9 in section 77-1363, parcel use, parcel type, location, geographic  
10 characteristics, zoning, city size, parcel size, and market  
11 characteristics. ~~Appropriate~~ appropriate for the valuation of such  
12 land. A ~~7~~ a class or subclass based on market characteristics  
13 shall be based on characteristics that affect the actual value in a  
14 different manner than it affects the actual value of properties not  
15 within the market characteristic class or subclass.

16                   Sec. 2. Section 77-1504.01, Revised Statutes Supplement,  
17 2002, is amended to read:

18                   77-1504.01. (1) After completion of its actions and  
19 based upon the hearings conducted pursuant to sections 77-1502 and  
20 77-1504, a county board of equalization may petition the Tax  
21 Equalization and Review Commission to consider an adjustment to a  
22 class or subclass of real property within the county. Petitions  
23 must be filed with the commission on or before July 26.

24                   (2) The commission shall hear and take action on a  
25 petition filed by a county board of equalization on or before  
26 August 10. Hearings held pursuant to this section may be held by  
27 means of videoconference. ~~and shall comply with section 84-1411,~~  
28 ~~except that a member of the commission need not be present at each~~

1 ~~videoconference site.~~ A duly appointed representative of the  
2 ~~commission shall be present at each videoconference site to take~~  
3 ~~custody of any exhibits and keep a record of persons who appear at~~  
4 ~~the hearing.~~ Hearings conducted pursuant to this section shall be  
5 in the manner prescribed in section 77-5026. The burden of proof  
6 is on the petitioning county to show that failure to make an  
7 adjustment would result in values that are not equitable and in  
8 accordance with the law.

9 (3) After a hearing the commission shall enter its order  
10 based on evidence presented to it at such hearing and the hearings  
11 held pursuant to section 77-5022 for that year. The order shall  
12 specify the percentage increase or decrease and the class or  
13 subclass of real property affected or any corrections or  
14 adjustments to be made to the class or subclass of real property  
15 affected. When issuing an order to adjust a class or subclass of  
16 real property, the commission may exclude individual properties  
17 from that order whose value has already been adjusted by a county  
18 board of equalization in the same manner as the commission directs  
19 in its order. On or before August 10 of each year, the commission  
20 shall send its order by certified mail to the county assessor and  
21 by regular mail to the county clerk and chairperson of the county  
22 board.

23 (4) The county assessor shall make the specified changes  
24 to each item of property in the county as directed by the order of  
25 the commission. In implementing such order, the county assessor  
26 shall adjust the values of the class or subclass that is the  
27 subject of the order. For properties that have already received an  
28 adjustment from the county board of equalization, no additional

1 adjustment shall be made applying the commission's order, but such  
2 an exclusion from the commission's order shall not preclude  
3 adjustments to those properties for corrections or omissions. The  
4 county assessor of the county adjusted by an order of the  
5 commission shall recertify the abstract of assessment to the  
6 Property Tax Administrator on or before August 20.

7 Sec. 3. Section 77-1510, Revised Statutes Supplement,  
8 2002, is amended to read:

9 77-1510. Appeals may be taken from any action of the  
10 county board of equalization to the Tax Equalization and Review  
11 Commission in accordance with the Tax Equalization and Review  
12 Commission Act. The appeal shall be filed or postmarked within  
13 thirty days after adjournment of the board which, for actions taken  
14 pursuant to section 77-1502, shall be deemed to be July 25 of the  
15 year in which the action is taken. After an appeal has been  
16 initiated, the county board of equalization shall have no power or  
17 authority to compromise, settle, or otherwise change the action it  
18 has taken with respect to such assessment, and exclusive  
19 jurisdiction thereof shall be vested in the Tax Equalization and  
20 Review Commission, except that the county board of equalization may  
21 offer to confess judgment pursuant to section 77-1510.01. ~~The~~  
22 ~~changes made to this section by Laws 2001, LB 170, shall apply to~~  
23 ~~all appeals pending on April 5, 2001, and to all appeals arising on~~  
24 ~~or after such date.~~

25 Sec. 4. Section 77-5001, Revised Statutes Supplement,  
26 2002, is amended to read:

27 77-5001. Sections 77-5001 to 77-5031 and section 11 of  
28 this act shall be known and may be cited as the Tax Equalization

1 and Review Commission Act.

2           Sec. 5.     Section 77-5003, Revised Statutes Supplement,  
3 2002, is amended to read:

4           77-5003. (1) The Tax Equalization and Review Commission  
5 is created. The Tax Commissioner has no supervision, authority, or  
6 control over the actions or decisions of the commission relating to  
7 its duties prescribed by law. The commission shall have three  
8 commissioners, one from each congressional district, and beginning  
9 on and after January 1, 2002, the commission shall have four  
10 commissioners. One ~~and one~~ at-large commissioner shall be  
11 appointed in addition to the commissioners representing the  
12 congressional districts. All commissioners shall be appointed by  
13 the Governor with the approval of a majority of the members of the  
14 Legislature. ~~One of the commissioners shall be designated by the~~  
15 ~~Governor as chairperson.~~

16           (2) The term of the commissioner from district 1 expires  
17 two years after the first appointment under this section, the term  
18 of the commissioner from district 2 expires four years after the  
19 first appointment under this section, and the term of the  
20 commissioner from district 3 expires six years after the first  
21 appointment under this section. The initial term of the at-large  
22 commissioner expires on January 1, 2008. After the initial terms of  
23 the commissioners are completed, each term shall be for six years.  
24 Upon the expiration of his or her term of office, a commissioner  
25 shall continue to serve until his or her successor has been  
26 appointed.

27           (3) The Governor shall designate one commissioner, who is  
28 an attorney admitted to practice before the Nebraska Supreme Court,

1 to serve as the chairperson of the commission from January 1, 2002,  
2 through December 31, 2003. Beginning on January 1, 2004, the  
3 commission shall designate pursuant to rule and regulation its  
4 chairperson and a vice-chairperson on a two-year, rotating basis  
5 among the commissioners who are attorneys admitted to practice  
6 before the Nebraska Supreme Court.

7 (4) A commissioner may be removed by the Governor for  
8 misfeasance, malfeasance, or willful neglect of duty or other cause  
9 after notice and a public hearing unless notice and hearing are  
10 expressly waived in writing by the commissioner.

11 Sec. 6. Section 77-5005, Revised Statutes Supplement,  
12 2002, is amended to read:

13 77-5005. (1) Within ten days after appointment, the  
14 commissioners shall meet at their office in Lincoln, Nebraska, and  
15 enter upon the duties of their office.

16 (2) A majority of the commission or, in cases when a  
17 panel of three commissioners hears a case, a majority of the panel  
18 shall at all times constitute a quorum to transact business, and  
19 one vacancy shall not impair the right of the remaining  
20 commissioners to exercise all the powers of the commission.

21 (3) Any investigation, inquiry, or hearing held or  
22 undertaken by the commission may be held or undertaken by or before  
23 a panel of three commissioners with the approval of the commission.

24 (4) ~~When holding hearings pursuant to sections 77-5016,~~  
25 ~~77-5024, and 77-5026, the commission may, after hearing the~~  
26 ~~evidence and argument on the record, recess to closed deliberations~~  
27 ~~for the limited purpose of deciding the matter before it~~  
28 ~~notwithstanding sections 84-1408 to 84-1414. After deliberating,~~

1 ~~the~~ The commission shall issue its final decision, accompanied by  
2 findings of fact and conclusions of law, in writing or on the  
3 record.

4 (5) All investigations, inquiries, hearings, and  
5 decisions of a panel of commissioners and every order made by a  
6 panel of commissioners shall be deemed to be the order of the  
7 commission. The full commission may grant a rehearing and  
8 determine de novo any decisions of or orders made by a panel of  
9 commissioners. The thirty-day filing period for appeals under  
10 subsection (2) of section 77-5019 shall be tolled while a motion  
11 for rehearing is pending.

12 (6) All hearings or proceedings of the commission shall  
13 be open to the public.

14 (7) Sections 84-1408 to 84-1414 shall only apply to  
15 hearings or proceedings of the commission held pursuant to the  
16 rulemaking authority of the commission.

17 Sec. 7. Section 77-5011, Revised Statutes Supplement,  
18 2002, is amended to read:

19 77-5011. The chairperson may call special meetings of  
20 the commission at such times as its business requires. The  
21 chairperson may also administer oaths and affirmations and sign all  
22 orders, certificates, and process in the name of the commission.  
23 ~~upon a roll call vote.~~ The chairperson shall attest all orders,  
24 certificates, and process with the official seal of the commission.  
25 In the absence of the chairperson the vice-chairperson may perform  
26 the duties of the chairperson. Orders, certificates, and process  
27 under the official seal of the commission may be enforced by the  
28 district court.

1           Sec. 8.    Section 77-5015, Revised Statutes Supplement,  
2   2002, is amended to read:

3           77-5015.   Cases may be appealed to the commission within  
4   thirty days after the final action of the county board of  
5   equalization or Property Tax Administrator. Appeals regarding the  
6   valuation or exemption of multiple parcels involving the same owner  
7   and the same issues may be consolidated at the discretion of the  
8   commission. Any multiple filing fees for consolidated appeals  
9   shall be refunded by the commission if such fees were paid prior to  
10   the consolidation of appeals by the commission. In any case  
11   appealed to the commission all parties shall be afforded an  
12   opportunity for hearing after reasonable notice. The notice shall  
13   state the time, and place, and issues involved, but if, by reason  
14   of the nature of the proceeding, the issues cannot be fully stated  
15   in advance of the hearing or if subsequent amendment of the issues  
16   is necessary, they shall be fully stated as soon as practicable of  
17   the hearing. Opportunity shall be afforded all parties to present  
18   evidence and argument. The commission shall prepare an official  
19   record, which includes testimony and exhibits, in each case, but it  
20   shall not be necessary to transcribe ~~shorthand notes~~ the record of  
21   the proceedings unless requested for purposes of rehearing, in  
22   which event the transcript and record shall be furnished by the  
23   commission upon request and tender of the cost of preparation.  
24   Informal disposition may also be made of any case by stipulation,  
25   agreed settlement, consent order, or default. ~~The commission shall~~  
26   ~~adopt and promulgate rules and regulations for notice and hearing~~  
27   ~~in cases appealed.~~

28           Sec. 9.    Section 77-5016, Revised Statutes Supplement,



1 2002, is amended to read:

2 77-5016. ~~All cases appealed to~~ Any hearing or proceeding  
3 of the commission shall be granted conducted as an informal hearing  
4 unless a formal hearing is granted as determined by the commission  
5 according to its rules and regulations. ~~In cases appealed to the~~  
6 ~~commission.~~ In any hearing or proceeding heard by the commission  
7 or a panel of commissioners:

8 (1) The commission may admit and give probative effect to  
9 evidence which possesses probative value commonly accepted by  
10 reasonably prudent persons in the conduct of their affairs. It  
11 shall give effect to the rules of privilege recognized by law. It  
12 may exclude incompetent, irrelevant, immaterial, and unduly  
13 repetitious evidence. Any party to an appeal filed under section  
14 77-5007 may request a formal hearing by delivering a written  
15 request to the commission not more than thirty days after the  
16 appeal is filed. The request shall include the requesting party's  
17 agreement to be liable for the payment of costs incurred and upon  
18 any appeal or review, including the cost of court reporting  
19 services which the requesting party shall procure for the hearing.  
20 The commission shall be bound by the rules of evidence applicable  
21 in district court in any formal hearing held by the commission.  
22 All costs of a formal hearing shall be paid by the party or parties  
23 against whom a final decision is rendered;

24 (2) The commission may administer oaths, issue subpoenas,  
25 compel the attendance of witnesses and the production of any  
26 papers, books, accounts, documents, statistical analysis, and  
27 testimony. The commission may adopt and promulgate necessary rules  
28 for discovery which are consistent with the rules adopted by the

1 Supreme Court pursuant to section 25-1273.01; and cause the  
2 depositions of witnesses residing either within or without the  
3 state to be taken in the manner prescribed by law for taking  
4 depositions in civil actions in the district court;

5           (3) The commission may consider and utilize the  
6 provisions of the Constitution of the United States, the  
7 Constitution of Nebraska, the laws of the United States, the laws  
8 of Nebraska, the Code of Federal Regulations, the Nebraska  
9 Administrative Code, any decision of the several courts of the  
10 United States or the State of Nebraska, and the legislative history  
11 of any of law, rule, or regulation, without making the document a  
12 part of the record. The commission may without inclusion in the  
13 record consider and utilize published treatises, periodicals, and  
14 reference works pertaining to the valuation or assessment of real  
15 or personal property or the meaning of words and phrases if the  
16 document is identified in the commission's rules and regulations.  
17 All other evidence, including records and documents in the  
18 possession of the commission of which it desires to avail itself,  
19 shall be offered and made a part of the record in the case. No  
20 other factual information or evidence other than that set forth in  
21 this section shall be considered in the determination of the case.  
22 Documentary evidence may be received in the form of copies or  
23 excerpts or by incorporation by reference;

24           (4) Every party shall have the right of cross-examination  
25 of witnesses who testify and shall have the right to submit  
26 rebuttal evidence;

27           (5) The commission may take notice of judicially  
28 cognizable facts and in addition may take notice of general,

1 technical, or scientific facts within its specialized knowledge or  
2 statistical information regarding general levels of assessment  
3 within a county or a class or subclass of real property within a  
4 county and measures of central tendency within such county or  
5 classes or subclasses within such county which have been made known  
6 to the commission. Parties shall be notified either before or  
7 during the hearing or by reference in preliminary reports or  
8 otherwise of the material so noticed. They shall be afforded an  
9 opportunity to contest the facts so noticed. The commission may  
10 utilize its experience, technical competence, and specialized  
11 knowledge in the evaluation of the evidence presented to it;

12 (6) Any person testifying under oath at a hearing who  
13 knowingly and intentionally makes a false statement to the  
14 commission or its designee is guilty of perjury. For the purpose  
15 of this section, perjury is a Class I misdemeanor;

16 (7) The commission shall hear appeals and cross appeals  
17 taken under section 77-5007 as in equity and without a jury and  
18 determine de novo all questions raised before the county board of  
19 equalization or the Property Tax Administrator which relate to the  
20 liability of the property to assessment or the amount thereof. If  
21 the appellant presents no evidence to show that the action taken by  
22 the board or the Property Tax Administrator is incorrect, the  
23 commission shall affirm such action. If the appellant presents any  
24 evidence to show that the action taken by the board or the Property  
25 Tax Administrator is incorrect, such action shall still be affirmed  
26 unless evidence is adduced establishing that the action of the  
27 board or the Property Tax Administrator was unreasonable or  
28 arbitrary. Any decision rendered by the commission shall be

1 certified to the parties and, if applicable, to the county  
2 treasurer and the official charged with the duty of preparing the  
3 tax list. When such decision becomes final, any officials shall  
4 correct their records accordingly;

5 (8) If the appeal concerns a decision by the county board  
6 of equalization that property is, in whole or in part, exempt from  
7 taxation, the decision to be rendered by the commission shall only  
8 determine the exemption status of the property. The decision shall  
9 not determine the taxable value of the property unless stipulated  
10 by the parties according to subsection (2) of section 77-5017; and

11 (9) The costs of any appeal, including the costs of  
12 witnesses, may be taxed by the commission as it deems just unless  
13 the appellant is the county assessor or county clerk in which case  
14 the costs shall be paid by the county.

15 (10) The commission shall deny the relief requested in  
16 any hearing or proceeding unless a majority of the commissioners  
17 present determine that the relief should be granted.

18 Sec. 10. Section 77-5021, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 77-5021. The commission may adopt and promulgate rules  
21 and regulations to carry out ~~the Tax Equalization and Review~~  
22 ~~Commission Act~~ its constitutional or statutory purposes, powers, or  
23 authority. The commission may adopt and promulgate rules and  
24 regulations necessary to regulate persons and proceedings within  
25 the commission's jurisdiction and authority.

26 Sec. 11. The commission shall give notice of the time  
27 and place of the first meeting held pursuant to sections  
28 77-1504.01, 77-5024, and 77-5026 by publication in a paper of

1 general circulation in the State of Nebraska. Such notice shall  
2 contain a statement that the agenda shall be readily available for  
3 public inspection at the principal office of the commission during  
4 normal business hours. The agenda shall be continually revised to  
5 remain current. The commission may thereafter modify the agenda  
6 and need only provide notice of the meeting to the affected  
7 counties in the manner provided in section 77-1504.01, 77-5024, or  
8 77-5026. The commission shall publish in its notice a list of  
9 those counties certified under section 77-5027 as having  
10 assessments which may fail to satisfy the requirements of law.

11           Sec. 12. Section 77-5022, Revised Statutes Supplement,  
12 2002, is amended to read:

13           77-5022. The commission shall annually equalize the  
14 values of all real property as submitted by the county assessors on  
15 the abstracts of assessments and equalize the values of real  
16 property which is valued by the state. For this purpose the  
17 commission shall meet as soon as the abstracts of assessments have  
18 been submitted by the county assessors. The commission shall have  
19 the power to adjourn from time to time until the equalization  
20 process is complete. Meetings held pursuant to this section may be  
21 held by means of videoconference. ~~and shall comply with section~~  
22 ~~84-1411, except that a member of the commission need not be present~~  
23 ~~at each videoconference site. A duly appointed representative of~~  
24 ~~the commission shall be present at each videoconference site to~~  
25 ~~take custody of any exhibits and keep a record of persons who~~  
26 ~~appear at the meeting.~~

27           Sec. 13. Section 77-5023, Revised Statutes Supplement,  
28 2002, is amended to read:

1                77-5023. (1) Pursuant to section 77-5022, the commission  
2 shall have the power to increase or decrease the actual value,  
3 special value, or recapture value of a class or subclass of real  
4 property of any county or tax district or real property valued by  
5 the state so that all classes or subclasses of real property in all  
6 counties fall within the acceptable range.

7                (2) Such increase or decrease shall be made by a  
8 percentage and shall result in the established indicator of central  
9 tendency of assessment for the class or subclass of real property  
10 adjusted at (a) seventy-seven percent of actual value for  
11 agricultural and horticultural land, (b) beginning January 1, 2001,  
12 ninety-six percent of special or recapture value for agricultural  
13 and horticultural land that receives special valuation pursuant to  
14 section 77-1344, and (c) ninety-six percent of actual value for  
15 nonagricultural and nonhorticultural real property. If such  
16 increase or decrease is made to a subclass of real property, the  
17 increase or decrease shall also cause the established indicator of  
18 central tendency of assessment for the class from which the  
19 subclass is drawn to fall within the acceptable range. This  
20 subsection shall become operative for all actions filed with the  
21 commission on or after April 7, 2000.

22                (3) For agricultural and horticultural land, the  
23 acceptable range shall be from seventy-four percent to eighty  
24 percent of actual value of agricultural and horticultural land;  
25 beginning January 1, 2001, for agricultural and horticultural land  
26 eligible for special valuation under section 77-1344, the  
27 acceptable range shall be from ninety-two percent to one hundred  
28 percent of the special valuation, and the recapture valuation shall

1 be between ninety-two to one hundred percent of the recapture  
2 value; and for nonagricultural and nonhorticultural real property,  
3 the acceptable range shall be from ninety-two percent to one  
4 hundred percent of actual value of nonagricultural and  
5 nonhorticultural real property.

6           Sec. 14.     Original section 77-5021, Reissue Revised  
7 Statutes of Nebraska, and sections 77-103.01, 77-1504.02, 77-1510,  
8 77-5001, 77-5003, 77-5005, 77-5011, 77-5015, 77-5016, 77-5022, and  
9 77-5023, Revised Statutes Supplement, 2002, are repealed.

10           Sec. 15.     Since an emergency exists, this act takes  
11 effect when passed and approved according to law.